

February 26, 2020

**SB 850 – Correctional Services – Immigration Detention –
Prohibition
(Dignity Not Detention Act)**

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**Testimony for
the Senate
Judicial
Proceedings
Committee**

The ACLU of Maryland supports SB 850, the Dignity Not Detention Act, which would prevent private prison companies from operating immigration detention centers in Maryland.

The immigration detention population has risen dramatically over the past few decades, due to federal enforcement policies. To manage this influx, ICE has increasingly contracted with private for-profit prison corporations, and local and county jails to house more individuals. This usually happens in one of two ways: (1) ICE contracts directly with private companies, or (2) ICE contracts with sub-federal jurisdictions and localities pursuant to Intergovernmental Service Agreements, and in turn, they subcontract with private corporations to provide detention services.

As a result, 70% of people in ICE custody are detained by private prison companies. Private immigration detention has become a lucrative, multibillion dollar industry that shapes federal policy by implementing contracts, and lobbying at the federal, state, and local level.² The two largest private detention operators, Geo Group and CoreCivic (formerly Corrections Corporation of America), account for 80% of the industry, and received \$1 billion in federal contracts last year.¹ As these companies reap massive profits, however, tens of thousands of immigrants are exploited in their care.

Even though the federal government oversees their detention facilities, private contractors largely operate without public oversight, transparency,

¹ Tara Tidwell Cullen, *Ice Released Its Most Comprehensive Immigration Data Yet. It's Alarming.*, Nat'l Immigrant Just. Ctr. (Mar. 13, 2018), available at <https://perma.cc/AQB9-HFPA>

² Denise Gilman & Luis A. Romero, *Immigration Detention, Inc.*, 6 J. on Migration & Hum. Security 145, 148 (2018).

¹ Renae Merle & Tracy Jan, *Wall Street pulled its financing. Stocks*

have plummeted. But private prisons still thrive. Washington Post, Oct. 3, 2019, accessed at: <https://www.washingtonpost.com/business/2019/10/03/wall-street-pulled-its-financing-stockshave-plummeted-private-prisons-still-thrive/>



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and accountability. They are not subject to constitutional requirements, administrative law, open records laws, and other legal checks that would otherwise apply to federal agencies doing the same work. Outsourcing immigration detention enables federal policies that may have otherwise been politically unviable. Without meaningful oversight, there is no incentive to provide for the health and safety or even treat humanely those entrusted to them. And so they do not.

As the private immigration detention business has become indistinguishable from the criminal justice system, there have been countless stories of willful neglect and the deliberate dehumanization of women, men, and children. As a matter of practice, contractors have exploited immigrant labor, provided low-quality medical care, abused detainees, and perpetuated inhumane living conditions. Immigrants in for-profit prisons have died from untreated HIV, untreated cancer, suicide, and heart attacks and seizures when staff waited too long to bring them to a hospital.⁴ Geo Group is currently facing litigation in several states for its inhumane treatment.⁵ While ICE is charged with monitoring their contractors, it fails to even enforce its own performance based detention standards.⁶

Preemption

State and local laws may be preempted by federal law under the Supremacy Clause. However, there is a strong anti-commandeering presumption against preemption when Congress legislates in an area traditionally occupied by the states. There must be a “clear and manifest purpose of Congress” to supersede the States’ police powers.⁷ This bill does not task Maryland with changing federal immigration policy, only how it exercises its police powers. And where the Immigration Nationality Act provides for cooperation between

⁴ Seth Freed Wessler, “This Man Will Almost Certainly Die,” *The Nation* (Jan. 28, 2016), available at <https://www.thenation.com/article/archive/privatized-immigrant-prison-deaths/> ⁵ Marcia Heroux Pounds, “ICE and its contractor Geo Group failed to treat immigrants humanely, lawsuit claims,” *South Florida Sun Sentinel* (Aug. 19, 2019), available at <https://www.sun-sentinel.com/business/fl-bz-geo-ice-detention-lawsuit-20190819c55ygh36pjejjjoby5knifwexm-story.html>

⁶ U.S. Department of Homeland Security, Office of the Inspector General, “ICE Does Not Fully Use Contracting Tools to Hold Detention Contractors Accountable for Failing to Meet Performance Standards” (Jan. 29, 2019), available at

<https://www.oig.dhs.gov/taxonomy/term/1677>⁷ *Arizona v. United States*, 567 U.S. 387, 400 (2012).



federal and state governments, it specifically conditions that cooperation on compliance with state law.s

SB 850 takes an important step toward addressing the abuse and dehumanization that immigrants face at the hands of ICE and its private contractors. But it also challenges us to answer one of the most crucial questions of our time: How much should companies be able to profit off human misery and pain? The most vulnerable people from around the world risk their lives coming here because of the promises that our country offers. Mercenaries who turn public safety and upholding the rule of law into a profitable business is immoral in any language. We keep our communities safe despite what it costs, not because of it.

We urge a favorable report on SB 850.

See 8 U.S.C. § 1252c(a), § 1357(g).⁸